

MASSACHUSETTS HAZARDOUS WASTE FACILITY SITING PROVISIONS

Topics

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Relevant Statutes and Regulations:

- G *Massachusetts General Laws, Chapters 21C and 21D, January, 1992*
- G Code of Massachusetts Regulations, 990 CMR 1.00-16.00, Hazardous Waste Facility Site Safety Council, July 1, 1993
- G Code of Massachusetts Regulations, 310 CMR 30.00, Department of Environmental Protection, August 23, 1996
- G <http://www.state.ma.us/dep/matrix.htm> for some applicable regulations

Other Relevant State Documents:

- G State Yellow Book, Who's Who in the Executive and Legislative Branches of the 50 State Governments, Leadership Directories, Inc., Spring 1997, Volume 9, Number 1

State Agency Web Address

- G <http://www.state.ma.us/dep/>

Hazardous Waste Facility Siting Provisions

Affected Facilities:

- G** New facilities, excluding:
 - C** facilities for the storage of hazardous waste if the proposed total licensed storage capacity will not exceed 25,000 gallons (990 CMR 1.02(2)(i)).
 - C** facilities for the treatment and/or recycling of hazardous waste if the proposed total licensed capacity will not exceed 10,000 gallons per week, or 500,000 gallons per year (990 CMR 1.02(2)(j)).

Definitions of Facility Types:

- G** “Facility,” a site or works for the storage, treatment, dewatering, refining, incinerating, reclamation, stabilization, solidification, disposal or other processes where hazardous wastes can be stored, treated or disposed of; however, not including a municipal or industrial waste water treatment facility if permitted under section forty-three of chapter twenty-one (MGL 21D:2, 990 CMR 3.00, 310 CMR 30.010).

Note: The Hazardous waste facility site safety council is defunct and the responsibilities are shifted to another party. The new responsible party has not been determined (1998)

Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ADMINISTRATION			
STATE ADMINISTERING AGENCY			
Department of Environmental Protection (DEP) -- relationship to other environmental departments	PPA	State Yellow Book	Massachusetts has an Environmental Affairs Executive Office with a secretary who is appointed by the governor. Under this office there are several departments, including the Environmental Protection Department, with its Commissioner and staff, and the Environmental Management Department, with its Commissioner and staff. Both commissioners are also appointed by the Governor.
Department of Environmental Protection (DEP) -- responsibilities	PPA	<i>[21C:4]</i>	<p>The responsibilities of the DEP include developing and establishing:</p> <ul style="list-style-type: none"> C a list of hazardous wastes, C criteria and standards for the identification of hazardous wastes, C provision for waivers of any waste determined as insignificant, C standards and requirements for the treatment, storage, transportation and disposal of hazardous waste, and C the recovery of resources from hazardous waste. <p>The DEP:</p> <ul style="list-style-type: none"> C conducts programs of public participation to assure that affected members of the public are afforded an opportunity to be heard, C adopts standards and procedures for a hazardous waste licensing program, C establishes a manifest system, C is responsible for the supervision of the maintenance and operation of all facilities, and C provide appropriate surveillance of hazardous waste processing, use, handling, storage, and disposal practices in the state.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Department of Environmental Protection (DEP) -- responsibilities (continued)	PPA	<i>[21D:16]</i>	The permits and licenses required for a hazardous waste facility in a city or town are granted or denied by the DEP within 60 days after application for said permits and licenses by the developer, or 21 days after the establishment of a siting agreement, whichever is later.
	PDP	310 CMR 30.832(4)	The DEP sends a copy of the draft facility license and the accompanying fact sheet to the applicant, the local board of health, each person as required for public notices, and any other person upon request.
	PDP	310 CMR 30.838	The DEP gives notice of its final license decision to the applicant and each person who has submitted written comment or requested notice of the final license decision.
Department of Environmental Management (DEM) --relationship to other environmental departments	PPA	State Yellow Book	Massachusetts has an Environmental Affairs Executive Office with a secretary who is appointed by the governor. Under this office there are several departments, including the Environmental Protection Department, with its commissioner and staff, and the Environmental Management Department, with its commissioner and staff. Both commissioners are also appointed by the governor.

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Topic	Stage ¹	State citation ²	Provision
Department of Environmental Management (DEM) -- responsibilities	PPA	<p><i>[21D:3]</i></p> <p><i>[21D:7(7)]</i></p> <p><i>[21D:8]</i> 990 CMR 6.01</p> <p><i>[21D:15]</i> 990 CMR 11.04</p>	<p>The Department of Environmental Management (DEM) is responsible for:</p> <ul style="list-style-type: none"> Ⓒ preparing an annual statewide environmental impact report, Ⓒ soliciting proposals for the construction, maintenance and operation of a hazardous waste facility designed to treat, process, or dispose of such hazardous waste when shortfalls in capacity have been indicated in the statewide environmental impact report, Ⓒ considering if proposals are environmentally safe and technologically sound, Ⓒ disseminating information widely throughout the commonwealth on the treatment, processing and disposal of hazardous waste, its impact on the economy of the commonwealth, the types of technology available, and the social and economic benefits and potential dangers resulting from the use of each type of technology, Ⓒ reporting results of its activities to the hazardous waste facility site safety council (the council) semi-annually, and Ⓒ publicizing throughout the commonwealth all proposals for the construction, maintenance and operation of hazardous waste facilities in order to inform the public and to encourage the development of suggestions for sites. <p>The Department publishes and disseminates any determination by the hazardous waste facility site safety council that a proposed project is feasible and deserving of state assistance by notifying all those who previously received the notice of intent and the chief executive officer of every city and town in the commonwealth. The Department includes its schedule of briefing sessions.</p> <p>The Department conducts briefing sessions for the purposes of insuring the participation of interested persons in the hazardous waste facility siting process, and informing the public about every proposal which the Council has determined to be feasible and deserving of state assistance.</p> <p>Within 60 days after the determination that the preliminary project impact report is in compliance with applicable law, the DEM informs the Council that an impasse in the negotiations exists.</p>

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Department of Environmental Management -- eminent domain	PPA	<i>[21D:17]</i>	If all permits and licenses required by law have been issued to the developer and a siting agreement has been established, the developer shall petition the department to exercise its eminent domain authority. Upon a showing by the developer, after due notice and a hearing thereon, that he has been unsuccessful in a good faith attempt to acquire all or a portion of the site by purchase or lease, the department exercises its eminent domain authority to make said acquisition, subject to approval by a majority vote of the city council, board of aldermen, or board of selectmen.
Department of Environmental Management (DEM) -- notice of intent determination	PPA	990 CMR 5.05(2)	The DEM sends notification of the council's determination regarding a notice of intent to the notice of intent recipients. If approved, the department also sends notification and a schedule of briefing sessions to the chief executive officer of every city and town in the commonwealth, and requests that a notice be published in the Environmental Monitor.
THE INTERAGENCY COORDINATING COUNCIL			
No provisions found.			
INDEPENDENT SITING BOARD			
Hazardous waste facility site safety council <ul style="list-style-type: none"> • The council is defunct and the responsibilities are shifted to another party. The new responsible party has not been determined (1998) 			

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
DEVELOPER			
Responsibilities of the developer -- notice of intent	PPA	[21D:7] 990 CMR 4.04	Every developer proposing to construct, maintain and operate a hazardous waste facility submits a notice of intent to: <ul style="list-style-type: none"> Ⓒ the Department of Environmental Management, Ⓒ the Hazardous Waste Facility Site Safety Council, Ⓒ the Mass. Department of Environmental Protection, Ⓒ the Chief Executive Officer of the host community, Ⓒ any regional planning agency of which the host community is a member or in which it otherwise participates, Ⓒ the Chief Executive Officer of all abutting communities, Ⓒ the Chairman of the conservation commission of the host community, Ⓒ the Chairman of the planning board of the host community, Ⓒ the Chief of the Fire Department of the host community, Ⓒ the Chairman of the Board of Health of the host community, Ⓒ the owner of the proposed site, and Ⓒ the local public library.
Responsibilities of the developer -- project impact report	PPA	[21D:10] 990 CMR 10.02 990 CMR 10.03	The developer prepares a preliminary project impact report to be submitted to the secretary and to the council for each site under consideration. The report consists of an environmental impact report and a social economic appendix. Upon the establishment of a siting agreement, the developer prepares a final project impact report containing information, comments and facility redesign data resulting from the negotiations process. The Council declares that an established siting agreement is operative and is to be given full force and effect only when a final project impact report has been found by the Secretary and the Council to be in compliance with the law.
Responsibilities of the developer -- impasse in negotiations	PPA	[21D:15] 990 CMR 11.04	Within 60 days after the determination that the preliminary project impact report is in compliance with applicable law, the developer informs the Council that an impasse in the negotiations of a siting agreement exists.

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Massachusetts Hazardous Waste Facility Siting Provisions

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LOCAL COMMUNITY NEEDS AND INVOLVEMENT			
LOCAL REVIEW/INVOLVEMENT			
Local Assessment Committee-- appointment and composition	PPA	<i>[21D:5]</i> 990 CMR 8.01- 8.03	<p>Not more than 30 days after the receipt of a notice of intent to construct, maintain and operate a hazardous waste facility on a site in a city or town, or notification by the DEM that a community is a host community in the final list of suggested sites established by the Council, the Chief Executive Officer of the city or town establishes a local assessment committee. The committee is be comprised of:</p> <ul style="list-style-type: none"> Ⓒ the Chief Executive Officer, who serves as Chairman; Ⓒ the Chairman of the local Board of Health or his designee; Ⓒ the Chairman of the local Conservation Commission or his designee; Ⓒ the Chairman of the local planning board or his designee; Ⓒ the Chief of the Fire Department or his designee; Ⓒ four residents of the city or town appointed by a majority vote of the listed city or town officials, three of whom are residents of the area of the city or town most immediately affected by the proposed facility; and Ⓒ not more than four members nominated by the Chief Executive Officer and approved by a majority vote of the City Council, Board of Aldermen, or Board of Selectmen of the city or town. <p>Of the four members nominated by the Chief Executive Officer, a representative of abutting communities shall be included. A majority constitutes a quorum for the purpose of conducting all business.</p> <p>If in any community one person holds more than one position listed above, he designates another person to serve as a member of the committee, so that there are five separate individual members in the first five positions listed.</p> <p>If the Chief Executive Officer fails to take the actions required to form the committee, the council promptly establishes and appoints the membership of the committee.</p>

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Local Assessment Committee -- responsibilities	PPA	<p><i>[21D:5]</i> 990 CMR 8.06</p> <p><i>[21D:15]</i> 990 CMR 11.04</p>	<p>The Local Assessment Committee has the following powers and duties:</p> <ul style="list-style-type: none"> Ⓒ to represent generally the best interest of the host community in all negotiations with the developers of proposed facilities in said community; Ⓒ to negotiate with the developer the detailed terms, provisions, and conditions of a siting agreement to protect the public health, the public safety, and the environment of the host community, as well as to promote the fiscal welfare of said community through special benefits and compensation; Ⓒ to receive and expend such technical assistance and planning grants as shall be made available and other funds made available from public or private sources; Ⓒ to enter into a nonassignable contract binding upon the host community, and enforceable against said host community in any court of competent jurisdiction, by the decision to sign a siting agreement; Ⓒ to cooperate wherever possible with abutting communities in negotiations with the developer over compensation for said abutting communities; Ⓒ to adopt such rules, regulations, procedures and standards as shall be necessary to carry out its functions and perform its duties; and Ⓒ to appoint two residents of the host community to serve without compensation and who shall participate in and vote with the council on matters concerning site selection in the community. <p>Within 60 days after the determination that the preliminary project impact report is in compliance with applicable law, the Local Assessment Committee of the host community informs the council that an impasse in the negotiations of a siting agreement exists.</p>
Local Assessment Committee -- quorum and majority vote	PPA	<p><i>[21D:5]</i> 990 CMR 8.04 & 8.05</p>	<p>A majority of the members of the committee constitutes a quorum. All actions and decisions of the local assessment committee are by majority vote of a quorum, except that authorizing the signing of a siting agreement or submission of negotiation status report are by a majority vote of the membership.</p>

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Local Assessment Committee must comply with the open meeting law	PPA	[21D:5] 990 CMR 8.07	<p>Meetings of a local assessment committee are subject to the Massachusetts Open Meeting Law.</p> <p>An executive session of a local assessment committee shall be held to discuss strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions and provisions of said siting agreement if such discussion or consideration in an open meeting shall have a detrimental effect upon the negotiating position of the local assessment committee or the establishment of the terms, conditions and provisions of said siting agreement.</p>
Local Assessment Committee establishes siting agreement	PPA	[21D:12] 990 CMR 14.01	<p>No facility is constructed, maintained or operated unless a siting agreement has been established by the developer and the local assessment committee of a host community, and the agreement has been declared to be operative and in full force and effect by the council. After this declaration, a siting agreement is a nonassignable contract binding upon the developer and the host community, and enforceable against the parties in any court of competent jurisdiction.</p> <p>The siting agreement specifies the terms, conditions and provisions under which the facility shall be constructed.</p>
Local Assessment Committee directs Chief Executive Office to establish siting agreement; arbitration	PPA	[21D:13] 990 CMR 13.01	A siting agreement shall be established by the signature of the Chief Executive Officer of a host community who has been directed by a majority vote of the Local Assessment Committee of said host community to sign and the signature of any officer of the developer expressly authorized to sign the agreement.
Local Board of Health notifies local governing authorities	PPA	[21C:4]	The DEP furnishes a copy of each permit or license application for the collection, storage, treatment, or disposal of hazardous waste to the local board of health, which is responsible for notifying the local governing authorities of any municipality within whose territorial jurisdiction a hazardous waste facility or activity is or will be located.

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Topic	Stage ¹	State citation ²	Provision
Chief executive officer of abutting community petitions the council for compensation	PPA	[21D:14] 990 CMR 12.00	The chief executive officer of any abutting community shall, within 60 days of the determination that a preliminary project impact report is in compliance with the law, petition the council for the establishment of compensation to be paid by the developer to the abutting community for the demonstrably adverse impacts to be imposed upon the community by the construction of a hazardous waste facility. As a condition precedent to the filing of the petition, the chief executive officer agrees in writing that his city or town either accepts the compensation determined by the council or the compensation established by arbitration as full settlement of any claims. The chief executive officer also agrees to sign an agreement with the developer accepting the amount creating an agreement which is a nonassignable contract binding on the abutting community and the developer, and enforceable in any court of competent jurisdiction.
Approval by host community of eminent domain	PPA	990 CMR 15.04	The department requests approval of the exercise of its eminent domain authority by majority vote of the city council, board of aldermen or board of selectmen of the community in which the land is located. This occurs after a notice and hearing, if the DEM determines that the developer has shown that he has made a good faith but unsuccessful attempt to acquire all or a portion of the proposed site by purchase or lease. If such approval is given, the DEM exercises its eminent domain authority and acquires title to the proposed site, which it then leases to the developer.
OTHER AGENCY OR GOVERNMENTAL ENTITY INVOLVEMENT			
All State agencies	PPA	[21D:13]	All State agencies are to endeavor to assist in facilitating negotiations between local assessment committees, the chief executive officer of abutting communities, and the developer.
COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS			
No provisions found.			
IMPACT OF FACILITY ON LOCAL LAND USE			
No provisions found.			

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PUBLIC PARTICIPATION			
<p>The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.)</p>			
NOTIFICATION			
Notice of intent to construct, maintain or operate facility	PPA	[21D:7] 990 CMR 4.02	<p>Every developer proposing to construct, maintain and operate a hazardous waste facility submits a notice of intent to the council, the DEM, the DEP, the division of hazardous waste, the chief executive officer of the host community, if any regional planning agency of which the host community is a member of or participates in, the chief executive officer of all abutting communities and those persons owning or otherwise exercising control over the real property of any site on which the developer proposes to construct a hazardous waste facility. The council meets at such time and place as determined by the chairman. Eleven members constitute a quorum. A quorum must be present to conclude a site agreement.</p> <p>The notice includes:</p> <ul style="list-style-type: none"> Ⓒ a description of the type of hazardous wastes the developer proposes to accept for treatment, processing and disposal at the facility; Ⓒ a description of the technology and procedures the developer proposes to use to treat, process and dispose of hazardous waste at the facility; Ⓒ the site, if any, proposed by the developer as a possible location for the construction and operation of the facility;

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Topic	Stage ¹	State citation ²	Provision
Notice of intent to construct, maintain or operate facility (Continued)	PPA	990 CMR 4.07	<p> C a description of the present suitability of the site, and of what additional measures, if any, will be required to make the site suitable for the purpose of constructing, maintaining and operating a facility; or in the event such developer is not proposing a site, the requirements and characteristics of a site that would be appropriate for said facility; C preliminary specifications and architectural drawings of the proposed facility; C a copy of the most recently published statewide environmental impact report issued by the DEM; and C any other information required. </p> <p>The developer names a specific site and indicate a willingness or unwillingness to utilize the site suggestion process, or name no specific site and indicate a willingness to utilize the site suggestion process.</p> <p>After the council declares a siting agreement to be operative, the developer promptly notifies the council and the notice of intent recipients of any new information or changes in the information provided in the notice of intent which could reasonably be deemed material to the council's determination that a proposed project is feasible and deserving.</p>
Notification of alternative sites	PPA	<i>[21D:9]</i> 990 CMR 7.05	<p>Within 10 days after the end of the period in which the DEM will accept suggestions for alternative facility sites, the DEM notifies:</p> <p> C the Chief Executive Officers and Board of Health of each host community and all abutting communities, C the members of the Local Assessment Committee of each host community, C the owner or owners of record of suggested sites, C the developer, C the Regional Planning Agency of any region in which there is a potential host or abutting community, and C newspapers, radio stations, and television stations serving each host community. </p> <p>The Department also requests that the list be published in the "Environmental Monitor."</p>

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Notification of proposed site--project notification	PPA	[21D:10] 990 CMR 10.01	<p>The developer files a project notification form with the Secretary, the Council, and the notice of intent recipients. The council issues public notice of the availability of this report. The project notification form consists of an Environmental Notification Form (ENF) and a Socio-Economic Notification Form (SENF) as the Council requires. This notification is made within:</p> <ul style="list-style-type: none"> C 90 days of the date of notification to the developer that a notice of intent which names a specific site is feasible and deserving of state assistance, or C 120 days of the date of notification to the developer of the final suggested site list. <p>Failure to meet these time requirements automatically rescinds the determination that the proposed project is feasible and deserving, unless the developer is granted an extension.</p>
Notification of Council's decision regarding notice of intent	PPA	990 CMR 5.05	<p>The Chairman or his designee sends written notification of the Council's determination, regarding a notice of intent, to the Chief Executive Officer and local assessment committee of any proposed host community or communities, the Developer, and the DEM. Such notification includes a written summary of the reasons for the determination.</p> <p>The DEM sends written notification of the Council's determination and a copy of the above-mentioned summary to the notice of intent recipients. If the Council has determined that a proposal is feasible and deserving of state assistance, the department further sends said notification and a schedule of briefing sessions to the Chief Executive Officer of every city and town in the commonwealth and requests that notice thereof be published in the "Environmental Monitor."</p>
Notice of request for reconsideration	PPA	990 CMR 5.05	The Council provides notification of its decisions regarding requests for reconsideration of notice of intent determinations to the chief executive officer and local assessment committee of any proposed host community, the developer and the DEM.

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Topic	Stage ¹	State citation ²	Provision
Notice of hearing on revocation	PPA	990 CMR 5.07	At any time prior to a declaration by the council that a siting agreement is operative, the council shall revoke a determination that a proposal is feasible and deserving of state assistance. If the council decides that it should consider revocation, notice is sent to the developer, the notice of intent recipients, the local assessment committee and the person who submitted information leading to the consideration of revocation. The notice includes a brief summary of the issues to be addressed by the council, and the date, time and place of the meeting at which the council discusses and votes on revocation. Notice of the final decision is sent to all notice of intent recipients, the developer, and the DEM.
Notice of public briefing sessions	PPA	990 CMR 6.04	<p>Whenever a public briefing session is to be conducted, the DEM sends a press release to the local press of the date, time and place of the briefing session, and similarly notifies the notice of intent recipients.</p> <p>When the site suggestion process is utilized, the DEM sends written notice to the chief executive officer of every city or town in the commonwealth of the expected date of the last briefing session and informs them that this date begins the site suggestion period.</p>
Notice of hearing on compensation	PPA	<i>[21D:14]</i> 990 CMR 12.03	The executive secretary gives at least 14 days prior notice, of an adjudicatory hearing to establish compensation to a petitioning abutting community, to the developer, the chief executive officer of the petitioning abutting community, and the local assessment committee. Notice of the hearing is also published in a newspaper serving the abutting community at least seven days prior to the hearing.
Notice of an operative siting agreement	PPA	990 CMR 14.03	<p>Notice of a declaration that a siting agreement is operative and is to be given full force and effort is given in writing to the following persons:</p> <ul style="list-style-type: none"> C Director, Department of Environmental Management, C Director, Division of Hazardous Waste, Department of Environmental Protection, C the Developer, C the Local Assessment Committee, and C the Chief Executive Officer of the host community and of each abutting community affected by the agreement.

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Notice of public hearing on eminent domain	PPA	990 CMR 15.02	<p>Within 14 days of receipt of a petition to exercise its eminent domain authority, the DEM notifies the following persons of the time and place of a public hearing to be held on said petition:</p> <ul style="list-style-type: none"> C the Developer, C the Local Assessment Committee, C the City Council, Board of Alderman or Board of Selectmen of the community in which the land is located, C the site owner, C the Council, and C local and regional media. <p>The Department also requests publication of notice of the hearing in the “Environmental Monitor.”</p>
Public notice for facility license actions	PDP	310 CMR 30.833	<p>The DEP gives public notice of the following:</p> <ul style="list-style-type: none"> C that a facility license application has been tentatively denied, C that a draft facility license has been prepared, and C that an informal public hearing on a draft license has been scheduled. <p>All public notices must allow for a 45-day comment period except for the informal public hearing.</p> <p>Public notices are given by mailing the notice to:</p> <ul style="list-style-type: none"> C the applicant; C EPA Region 1 Regional Administrator; C the Board of Health of the city or town in which the facility is to be located; C the “Environmental Monitor,” to the extent practicable; C each city or town having jurisdiction over the area in which the facility is proposed to be located; C each State Agency having any authority pursuant to State law with respect to the construction and operation of the facility; C each Federal and State agency, including agencies of any affected State other than Massachusetts, with jurisdiction over fish, shellfish, or wildlife resources, coastal zone management plans, or historic preservation; and C persons on a mailing list developed by the DEP.

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PUBLIC MEETING			
Public briefing sessions on hazardous waste for siting process	PPA	<i>[21D:8]</i> 990 CMR 6.01-6.03	<p>The DEM conducts briefing sessions for the purposes of insuring the participation of interested persons in the hazardous waste facility siting process and of informing the public about every proposal which the hazardous waste facility siting council has determined to be feasible and deserving of state assistance. The Department establishes whatever schedule of briefing sessions it deems appropriate to achieve these purposes.</p> <p>The DEM conducts its first briefing session on a proposal within 30 days after it has completed its dissemination of the council's determination. If a specific site is involved, this session is held in the host community, otherwise the department determines the location of the initial briefing session. Subsequent sessions are held where the department deems appropriate and calculated to best insure public awareness and participation in the siting process.</p> <p>If the site suggestion process is utilized, within 30 days of the publication of the final suggested site list, the department conducts at least one briefing session in each community on the final list.</p> <p>The department gives a reasonable opportunity to persons attending the hearing to discuss, comment upon, or criticize all or any part of the proposal and shall ask questions of the developer, the department, or any other agencies represented at the briefing session.</p>

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Topic	Stage ¹	State citation ²	Provision
PUBLIC HEARINGS			
Compensation hearing	PPA	<i>[21D:14]</i> 990 CMR 12.03 & 12.05	<p>The council, after due notice to the developer, the local assessment committee and the chief executive officer of the abutting community which has petitioned for compensation, conducts a public hearing to determine and establish the compensation to be given to the abutting community by the developer. This compensation is for demonstrably adverse impacts to be imposed upon by the community by the construction of a hazardous waste facility.</p> <p>The hearing is conducted by a presiding officer appointed by the council. It is open to the public. The presiding officer renders a tentative determination of the compensation within 14 days of the adjournment of the hearing. Not more than 45 days following the tentative determination, the council issues a final determination establishing compensation.</p>
Informal public hearing for facility licenses	PDP	310 CMR 30.837	<p>If during the comment period, or within 15 days of the close of the comment period, the DEP receives written notice requesting an informal public hearing, or if the department determines that there is significant public interest in a draft license, the Department schedules an information public hearing on the proposed action.</p> <p>Whenever possible, the department schedules the hearing at a convenient location near the population center nearest the proposed facility.</p> <p>Where practicable, the department schedules the hearing to be held within 30 days of receipt of the written request, but in no case sooner than 30 days after the date of the public notice of the hearing.</p>
Public hearing regarding eminent domain	PPA	990 CMR 15.03	No later than 45 days after receipt of a petition to exercise its eminent domain authority, the DEM conducts a public hearing.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ADJUDICATORY HEARINGS			
Adjudicatory hearings; judicial review	PA PDP	<i>[21C:11]</i>	<p>Any person aggrieved by a determination by the DEP to issue, deny, modify, revoke or suspend any license or approval, or to issue an order, shall request an adjudicatory hearing before the DEP. Any such determination contains a notice of this right to request a hearing and shall specify a time limit, not to exceed 21 days, within which the aggrieved person requests a hearing. If no such request is timely made, the determination is concurred with.</p> <p>A person aggrieved by a final decision in an adjudicatory hearing held under the provisions of this section shall obtain judicial review.</p>
Arbitration awards	PPA	<i>[21D:14]</i>	The provisions of the arbitration award are subject to judicial review.
Hearing for revocation of determination	PPA	990 CMR 5.07(3)	<p>In the event that the Council decides to revoke a feasible and deserving determination, the developer shall request an adjudicatory hearing. The hearing is conducted by a presiding officer appointed by the Council, and is open to the public.</p> <p>Within 30 days of adjournment of the adjudicatory hearing, the presiding officer renders a tentative decision. Copies of the decision are sent to parties of the proceeding, the notice of intent recipients, and the local assessment committee.</p> <p>Within 45 days of the close of the public comment period for filing objections to the tentative decision, the Council renders its final decision.</p>
Hearing on compensation to abutting communities	PPA	990 CMR 12.03	The executive secretary of the council, upon the approval of a siting agreement, sets the date, time and place of an adjudicatory hearing to establish the compensation to be given by the developer to the petitioning abutting community. The hearing commences no later than 45 days after approval of the siting agreement, with at least 14 days prior notice given to the developer, the chief executive officer of the community and the local assessment committee of the host community.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
PUBLIC COMMENTS			
Opportunities for public comment	PPA PA	990 CMR 7.04	No decision is rendered by the council relating to any suggested site until the expiration of a 45-day public comment period.
		990 CMR 4.05	The council issues a press release containing a notice of intent and establishing a 45-day comment period.
		990 CMR 5.07(3)	The council issues a notice regarding an adjudicatory hearing tentative decision on the revocation of a feasible and deserving determination. A 45-day comment period is provided before a final decision is rendered.
		990 CMR 10.01(5)	There is a review period of 20 days for public comment on the scope of the Socio-economic appendix submitted as part of the project notification form.
		990 CMR 10.02(6) 990 CMR 10.03(4)	There is a review period of 30 days for public comment on both the draft and final Socio-economic appendix submitted with the project impact report.
		310 CMR 30.833	Regarding facility license applications, a public comment period of at least 45 days is be allowed.
		310 CMR 30.836	The public comment period for facility license application shall be extended by the DEP. Notice is given specifying any new issues to be considered.
Written comments	PA	310 CMR 30.836	During the public comment period provided, any interested person shall submit written comments on the draft license to the DEP.
Summary response to comments	PDP	310 CMR 30.839	At the time any license is issued, the DEP prepares a summary response to comment which is available to the public and which describes any changes made to the draft license, including the reason(s) for each such change.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
OTHER			
Site suggestion by the public and other sources	PPA	[21D:9] 990 CMR 7.02	<p>If the developer indicates in his notice of intent a willingness to accept suggestions for a site, whether as alternative sites to a site already proposed or as initially suggested sites, the DEM, for a period of 50 days after the conclusion of the briefing session, accepts suggestions for sites proposed and submitted by any of the following persons:</p> <ul style="list-style-type: none"> C private individuals who own, or have a substantial financial interest in, the suggested site; C the chief executive officer or the local assessment committee of a host community suggesting a site within said host community which is publicly owned and probably available for lease or sale to the developer, or which is privately owned, where reasonable grounds exist for the belief that said site might be readily available for use as a site for a facility; C the developer suggesting a site either as an alternative to, or in addition to the site originally proposed in his notice of intent or as an initial suggestion for a site if none was proposed in his notice of intent; C any agency of the commonwealth suggesting a site which is publicly owned and probably available for lease or sale to the developer, or which is privately owned, where reasonable grounds exist for the belief that said site might be readily available for use as a site for a facility; and C the chief executive officer of any city or town in the commonwealth suggesting a site in his city or town which is publicly owned and probably available for lease or sale to the developer, or which is privately owned, where reasonable grounds exist for the belief that said site might be readily available for use as a site for a facility. <p>Any person or agency so suggesting a site, prior to such suggestions, notifies in writing the owner or owners of record of the site and the chief executive officer of the host community. Site suggestions shall be withdrawn by the persons or agency making the suggestion within the 50 days permitted for making suggestions. The 50-day period for suggestions shall be extended for an additional 30 days by the council if no suggestions have been received.</p>

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Arbitration panel for compensation dispute	PPA	990 CMR 12.06 & 13.00	<p>If the chief executive officer of the abutting community or the developer is aggrieved by the amount of compensation established by the council, either party shall appeal within 15 days to the council to establish an arbitration panel, which is comprised of three arbitrators, to resolve the dispute. The council, upon such appeal, establishes said arbitration panel by appointing one arbitrator selected by the chief executive officer of the abutting community, one arbitrator selected by the developer, and the third an impartial arbitrator, who is selected by the chief executive officer of the abutting community and by the developer and who acts as chairman of the panel or, if the chief executive officer of the abutting community and the developer agree, a single impartial arbitrator acceptable to the chief executive officer or the abutting community and the developer.</p> <p>If an arbitration panel or single arbitrator has not been selected within 30 days after an appeal for arbitration has been filed, the council appoints the arbitrator necessary to complete the three person panel, which acts with the same force and effect as if the panel had been selected without the intervention of the council.</p> <p>The arbitration panel by a majority vote, or single arbitrator, within 45 days after establishment determines the amount of compensation to be paid by the developer to the abutting community. The council shall extend the time for the conduct of arbitration.</p> <p>The final arbitration award is subject to judicial review.</p>

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
SITING RESTRICTIONS AND PROHIBITIONS			
Federal siting restrictions and prohibitions can be viewed at http://www.epa.gov/epacfr40/chapt-I.info/subch-I/ by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document. (State regulations cannot be less stringent than the federal counterparts.)			
SOIL AND WATER			
Drinking water sources - restrictions	PPA	<i>[21C:7]</i>	<p>No person shall establish, construct, or operate a facility for the landfill disposal of hazardous waste in a location overlying an actual, planned, or potential underground drinking water source.</p> <p>No landfill for the treatment or disposal of hazardous waste shall be operated in such a manner as to cause discharge of hazardous waste into surface waters or groundwaters which the DEP or the water resources commission has determined are presently used, or shall reasonably be expected to be used in the future, as sources for the supply of drinking water.</p>
Water sources prohibitions	PPA	990 CMR 5.04(8) 310 CMR 30.702(1)	<p>In the council review of the notice of intent, any proposed project which names a specific site will be considered feasible and deserving of state assistance only if based on the information available, it can be reasonably expected that if any portion of the proposed site is to be used for surface impoundments or for the disposal of hazardous waste into or on the land (including landfills, seepage facilities, injection wells, land treatment facilities and road oiling with waste oil), no portion of a proposed site is located:</p> <ul style="list-style-type: none"> C within the watershed of a Class A or Class SA segment of surface waters; C over an aquifer designated as a sole-source aquifer; or C within the cone of influence, if known, or otherwise within 1000 feet of a well-head serving a community water system, or within 250 feet of a private well.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Location restrictions for groundwater protection	PPA	310 CMR 30.703(2)-(4)	<p>No active portion of a new hazardous waste landfill, land treatment unit, surface impoundment, miscellaneous unit or waste pile shall be located on land which is overlying an actual, planned or potential public underground drinking water source; or within a 1/2 mile radius of an existing well used as a source of drinking water for a public water system.</p> <p>No active portion shall be located in the flow path of groundwater supplying any well for any public water system.</p> <p>No active portion shall be located in the flow path of a planned or potential public underground drinking water source.</p>
Location restrictions for the protection of private water supplies	PPA	310 CMR 30.704(1)-(3)	<p>No active portion of a new hazardous waste landfill shall be located in the flow path of groundwater supplying water to an existing well which is used as a source of drinking water supply by a person other than a public water system and which is located within a distance that corresponds to 20 years of travel of groundwater which has traversed the facility site.</p> <p>In no case shall any active portion of any hazardous waste landfill, surface impoundment, land treatment unit or waste unit be located within 1000 feet of an existing well used as a source of drinking water by a person other than a public water system.</p> <p>No active portion shall be located in the flow path of groundwater supplying a potential private underground drinking water source, unless the owner or operator owns the water rights in certain instances.</p>

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
SEISMIC CONSIDERATIONS			
No provisions found.			
FLOODING AND EROSION			
Prohibitions regarding floodplains	PPA	990 CMR 5.04(8)	In the council review of the notice of intent, any proposed project which names a specific site will be considered feasible and deserving of state assistance only if, based on the information available, it can be reasonably expected that if any portion of the proposed site is to be used for surface impoundments or for the disposal of hazardous waste into or on the land, including landfills, seepage facilities, injection wells, land treatment facilities and road oiling with waste oil, no portion of a proposed site is located within the 100-year floodplain or the boundary of the inland or coastal flood of record, whichever is greater.
Location standards for wastewater treatment units	PA	310 CMR 30.605(5)	No person shall construct a wastewater treatment unit at a site at which hazardous waste is generated, if such a site is on land subject to flooding from the statistical 100-year frequency storm, unless it is floodproofed.
Location restrictions in areas with flooding from the statistical 100-year frequency storm	PA	310 CMR 30.701(1)&(5)	No active portion of a new storage or treatment facility which receives hazardous waste from any off-site source shall be located within the boundary of land subject to flooding from the statistical 100-year frequency storm. The owner or operator will floodproof each active portion located outside the boundary of land subject to flooding from the statistical 100-year frequency storm, but within the boundary of land subject to flooding from the statistical 500-year frequency storm.
Location restrictions in areas with flooding from the statistical 500-year frequency storm	PPA	310 CMR 30.701(6)	No active portion of a landfill, land treatment unit, surface impoundment or waste pile shall be constructed or expanded into or within the boundary of land subject to flooding from the statistical 500-year frequency storm.
AIR			
No provisions found.			

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
DISTANCE LIMITATIONS/BUFFER ZONES			
Location restrictions for underground drinking water supplies	PPA PA	310 CMR 30.703 (2)(b) &(3)	No active portion of a new hazardous waste landfill, land treatment unit, surface impoundment, miscellaneous unit or waste pile shall be located within a 1/2 mile radius of an existing well used as a source of drinking water for a public water system. The DEP shall specify an appropriate buffer zone to ensure that groundwater which has traversed the facility site does not supply any well for any public water system.
Location restrictions for private water supplies	PPA PA	310 CMR 30.704(1)-(2)	The DEP shall specify an appropriate buffer zone to ensure that groundwater traversing the facility site does not supply an existing well which is used as a source of drinking water supply by a person other than a public water system. In no case will any active portion of any hazardous waste landfill, surface impoundment, land treatment unit or waste pile be located within 1000 feet of an existing well used as a source of drinking water supply by a person other than a public water system. The department shall specify an adequate buffer zone in addition to other boundaries of the area which are the boundaries of the flow path of groundwater which has traversed the active portion of the facility.
Buffer zones between the active portion of a facility and the facility property line	PPA PA	310 CMR 30.705(3)-(4)	The owner or operator will provide a buffer zone of at least 200 feet between the active portion of the facility and the facility property line. In the cases where the hazardous waste is ignitable, the buffer zone distance will be a minimum of 300 feet. The DEP shall require a distance greater than 300 feet if it determines that 300 feet is not sufficient to protect public health, safety or welfare.
OTHER HUMAN HEALTH CONSIDERATIONS			
Health and safety provisions	PA	<i>[21D:12]</i>	The siting agreement, which is established by the developer and local assessment committee, shall include provisions to assure the health, safety, comfort, convenience, and social and economic security of the host community and its citizens.
Public health provisions	PPA	990 CMR 5.04(9)	In the council review of the notice of intent, based on the information available, it can be reasonably expected that no other facts or circumstances raise significant concern as to the impact of the proposed project on the environment or the public health and safety.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Various other public health considerations	PPA	310 CMR 30.705(1)	<p>The DEP will evaluate the following factors with regard to the location of each new facility:</p> <ul style="list-style-type: none"> Ⓒ the transportation risk(s) associated with waste(s) arriving at, or leaving, the facility; Ⓒ the adequacy of buffer zones between the active portion(s) of the facility and areas of public access; Ⓒ the population density in the vicinity of the facility site; Ⓒ the proximity of the facility to schools, hospitals, nursing homes, day care centers; and Ⓒ where applicable, the proposed method(s) of evacuation of threatened populations within a reasonable time after an accident.
ENVIRONMENTALLY SENSITIVE AREAS			
Environment and natural resources provisions	PPA	[21D:12]	The siting agreement, which is established by the developer and local assessment committee, shall include provisions to assure the protection of the environment and natural resources.
Endangered Species			
No provisions found.			
Critical Habitats			
Prohibition regarding areas of critical environmental concern	PPA	990 CMR 5.04(4)	In the council review of the notice of intent, any proposed project which names a specific site will be considered feasible and deserving of state assistance only if, based on the information available, it can be reasonably expected that no portion of a proposed site is located in an area designated by the secretary as an “area of critical environmental concern”.
Prohibition regarding marshes, beaches or dunes	PPA	990 CMR 5.04(3)	In the council review of the notice of intent, any proposed project which names a specific site will be considered feasible and deserving of state assistance only if, based on the information available, it can be reasonably expected that no portion of a proposed site is located on a salt marsh, a barrier beach, a coastal beach or on coastal dunes.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Wetlands			
Prohibition regarding vegetated wetlands	PPA	990 CMR 5.04(2) & (5) 310 CMR 30.705(6)	In the council review of the notice of intent, any proposed project which names a specific site will be considered feasible and deserving of state assistance only if, based on the information available, it can be reasonably expected that no portion of a proposed site is located in bordering vegetated wetlands. Construction of a new facility in wetlands is prohibited.
Wild, Scenic or Recreational Areas			
Prohibition regarding streams, rivers, and national parks or forests	PPA	990 CMR 5.04(6) & (7)	In the council review of the notice of intent, based on the information available, it can be reasonably expected that no portion of a proposed site is located within lands designated as scenic and recreational rivers and streams of the commonwealth. Also, no portion of the proposed site is located within a national park or forest.
Approved Farmland Preservation Areas			
No provisions found.			
Other			
Project Impact Report	PPA	[21D:10] 990 CMR 10.02(1) & 10.03(1)	As part of the project impact report, the developer will prepare an environmental impact report.
OTHER RESTRICTIONS			
Prohibitions regarding salt domes, salt bed formations, underground mines, and caves	PA	310 CMR 30.707	No person shall place any hazardous waste, or any container or tank holding hazardous waste, in any salt dome, salt bed formation, underground mine, or cave.

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Massachusetts Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ENVIRONMENTAL JUSTICE CONSIDERATIONS			
No provisions found.			
ECONOMIC CRITERIA			
Socio-economic appendix	PPA	<i>[21D:10]</i> 990 CMR 10.01(6)	For each hazardous waste site under consideration, the developer prepares a preliminary project impact report, including a Socio-economic appendix. The SEA assesses the probable socio-economic impacts (both positive and negative) of the proposed project and of the alternatives considered in the Environmental Impact Report. It will also describe feasible measures to minimize any adverse socio-economic impacts. Within 30 days of the determination that the final SEA is adequate, the council declares a siting agreement to be operative and in full force and effort.
OTHER CRITERIA			
No provisions found.			

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